

DOCKET FILE COPY ORIGINAL

Allegheny Communications Group,  
Inc. (Allegheny)  
MM Docket No. 93-88

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Allegheny Communications Group,  
Inc. (Allegheny) Exhibit No.1  
MM Docket No. 93-88

THE APPLICANT -

DECLARATION OF HERBERT E. LONG, JR.

FEDERAL COMMUNICATIONS COMMISSION

Docket No. 93-88 Exhibit No. 105 #1

Presented by ACG Identified 10/13/93

Disposition: Received 10/13/93  
Rejected

Reporter JOE KEARNER  
Date 10/13/93

DECLARATION OF HERBERT E. LONG, JR.

1. I, Herbert E. Long, Jr. under penalty of the laws of perjury, hereby declare as follows:

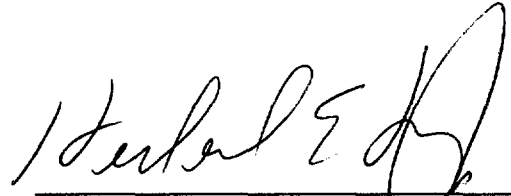
Allegheny Communications Group, Inc. (Allegheny) is a corporation formed in Delaware which has authorized one class of stock, consisting of 1,000 shares of common voting stock. The individuals who have subscribed to the stock in Allegheny are listed below as well as those persons who are the officers and the three directors in Allegheny:

| <u>Name of<br/>Subscriber</u>   | <u>Number of<br/>Shares Sub-<br/>scribed To</u> | <u>Percentage<br/>of Votes and<br/>Ownership</u> | <u>Offices<br/>in Allegheny</u>           |
|---|---|--|---|
| Mr. Herbert E. Long, Jr.<br>4603-B MacArthur Blvd.<br>Washington, D.C. 20007                          | 163   | 16.3%  | President and<br>a Director               |
| Mr. Herbert E. Long, III<br>4603-B MacArthur Blvd.<br>Washington, D.C. 20007                          | 50  | 5.0%   | Vice President                            |
| Ms. Lorraine H. Brown<br>Penn's Landing Square<br>311 C South Second Street<br>Philadelphia, PA 19106 | 150   | 15.0%  | Secretary-<br>Treasurer and<br>a Director |
| Ms. Beatrice W. Welters<br>919 Saigon Road<br>McLean, VA 22102  | 287   | 28.7%  | Vice President<br>and a Director          |
| Ms. Diane J. Duggin<br>156 Three Ponds Lane<br>Malvern, PA 19355                                      | 287   | 28.7%  | -----                                     |
| Mr. Eldridge Smith<br>307 Glen Echo Road<br>Philadelphia, PA 19119                                    | 287   | 2.0%   | -----                                     |

| <u>Name of<br/>Subscriber</u>  | <u>Number of<br/>Shares Sub-<br/>scribed To</u> | <u>Percentage<br/>of Votes and<br/>Ownership</u> | <u>Offices<br/>in Allegheny</u> |
|--|---|--|---------------------------------|
| William E. and Hazel M. Floyd<br>(Tenants by the Entirety)<br>322 Kerlin Street<br>Chester, PA 19013 | 13  | 1.3%   | -----                           |
| Ms. Alicia Perkins<br>Conventry Court<br>707A S. 18th Street<br>Philadelphia, PA 19146               | 13  | 1.3%   | -----                           |
| Odessa and James Floyd, Sr.<br>(Tenants by the Entirety)<br>11 W. Mowry Street<br>Chester, PA 19013  | 13  | 1.3%   | -----                           |
| Mr. William Thompson<br>719 E. 25th Street<br>Chester, PA 19103                                      | 3   | .3%  | -----                           |
| Mr. Nicholas Perkins<br>Coventry Court<br>707A S. 18th Street<br>Philadelphia, PA 19146              | <u>1</u>  | <u>.1%</u>                                       | -----                           |
| Total  | 1,000 shares                                    | 100.0%   |                                 |

2. Neither Allegheny nor any of its stockholders own any interest in any radio station or other media of mass communication.
3. As President of the applicant corporation, I will devote time to general oversight in the construction, staffing, and operation of the station and while such time maybe substantial, particularly in the initial phases of construction and operation, it is not believed that such time would average twenty hours per week over an extended period of time. Should Commission policy permit integration credit for such activity, the applicant will claim such

credit for myself and enhancement credit for my minority status as an Afro-American. I will curtail any business or other activities as necessary in order to fulfill my above stated commitment to the station.

A handwritten signature in cursive script, appearing to read "Herbert E. Long, Jr.", written over a horizontal line.

Herbert E. Long, Jr.  
President

Date: 9-21-93





Allegheny Communications Group, Inc.  
(Allegheny) Exhibit No.2  
MM Docket No. 93-88

DECLARATION OF HERBERT E. LONG, III

FEDERAL COMMUNICATIONS COMMISSION

Docket No. 9388 Exhibit No. ACG #2

Presented by ACG Identified 10/13/93

Disposition: Received 10/13/93  
Rejected

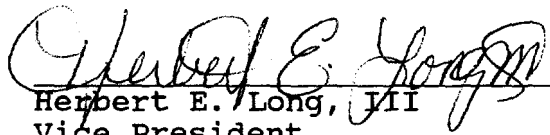
Reporter SPC KERNER  
Date 10/13/93

DECLARATION OF HERBERT E. LONG III

I, Herbert E. Long, III, under penalty of the laws of perjury, hereby declare as follows:

1. I am the Vice President and five percent (5%) stockholder in Allegheny Communications Group, Inc. (Allegheny) I reside at 4603-B MacArthur Blvd., Washington, D.C. 20007.
2. In the event of grant of Allegheny's application for construction permit for a new FM radio station at Pittsburgh, Pennsylvania (File No. BPH-910628MC), I will be the Business Manager of the proposed station, working that capacity full-time, i.e., a minimum of forty hours per week. To effectuate this commitment, I will relocate my residence to Pittsburgh, PA. As Business Manager, I will supervise all financial aspects of the station's operation, including budget and financial planning, the sales and promotion staff, and the accounting staff. I will also supervise the station's Equal Employment Opportunity Program. I will also advise and consult with the General Manager as to programming policies and decisions. Enhancement credit will be sought for my proposed local residence and my minority status as an Afro-American. I will resign any employment and discontinue or curtail any school or other activity as necessary in order to fulfill my full-time commitment to the station.

3. Allegheny will have auxiliary power sources at its studios and transmitter site to assure continuous operation of the station.

  
Herbert E. Long, III  
Vice President

Date: 9/21/93



Allegheny Communications Group, Inc.  
(Allegheny)  
Exhibit No.3  
MM Docket No. 93-88

**DECISION DATED NOVEMBER 16, 1988**

In the Matter of the Arbitration between

AMERICAN FEDERATION OF TELEVISION AND  
RADIO ARTISTS - PITTSBURGH (AFTRA)

and

EZ COMMUNICATIONS, INC., WBZZ FM

CASE NUMBER: 55-300-0064-88

FEDERAL COMMUNICATIONS COMMISSION

Docket No. 93-88 Exhibit No. ACG #3

Presented by ACG Identified 10/13/93

Disposition: Received \_\_\_\_\_  
Rejected \_\_\_\_\_

Reporter Sgt. KLASNER  
Date 10/13/93

# American Arbitration Association

## VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

AMERICAN FEDERATION OF TELEVISION AND  
RADIO ARTISTS - PITTSBURGH (AFTRA)

and

EZ COMMUNICATIONS, INC., WBZZ FM

CASE NUMBER: 55-300-0064-88

### AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

The grievance is sustained. The grievant is to receive payment for all severance benefits to which she is entitled together with interest at the rate of 6% per annum from February 5, 1988.

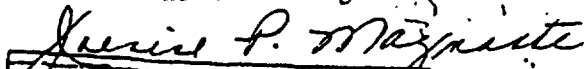


Arbitrator's signature (dated)

STATE OF PENNSYLVANIA  
COUNTY OF ALLEGHENY

} ss.:

On this 16th day of November, 1988, before me personally came and appeared Ronald F. Talarico to me known and known to me to be the individual(s) described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

  
JOENISE P. MAGNANTI, NOTARY PUBLIC  
PITTSBURGH, ALLEGHENY COUNTY  
MY COMMISSION EXPIRES JUNE 30, 1990  
Member, Pennsylvania Association of Notaries



|                                  |   |                                    |
|----------------------------------|---|------------------------------------|
| IN THE MATTER OF THE ARBITRATION | ) | <u>OPINION AND AWARD</u>           |
|                                  | ) |                                    |
| Between                          | ) |                                    |
|                                  | ) |                                    |
| AMERICAN FEDERATION OF           | ) | <u>RONALD F. TALARICO</u>          |
| TELEVISION AND RADIO             | ) | <u>ARBITRATOR</u>                  |
| ARTISTS - PITTSBURGH (AFTRA)     | ) |                                    |
|                                  | ) |                                    |
| and                              | ) |                                    |
|                                  | ) | AMERICAN ARBITRATION ASSOC.        |
| EZ COMMUNICATIONS, INC.          | ) | <u>CASE NUMBER: 55-300-0064-88</u> |
| WBZZ-FM                          | ) |                                    |

GRIEVANT

ELIZABETH RANDOLPH

ISSUE

PAYMENT OF SEVERANCE BENEFITS

HEARING

August 19, 1988  
Pittsburgh, Pennsylvania

BRIEFS SUBMITTED

November 2, 1988

APPEARANCES

For the Union

Samuel P. Kamin, Esquire  
Terry L. Jordan, Esquire

For the Employer

Stephen H. Jordan, Esquire

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esquire, was mutually selected by the parties from a list supplied by the American Arbitration Association to hear and determine the issues herein. A hearing was held in Pittsburgh, Pennsylvania, on August 19, 1988, at which time the parties were given an opportunity to introduce documentary evidence and to examine and cross examine witnesses. Post-Hearing Briefs were submitted by both parties on November 2, 1988, at which time the record was closed. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

SCHEDULE 1 - ANNOUNCERS

\* \* \*

B. Staff Working Conditions

\* \* \*

7. The following provisions shall govern severance: each announcer shall receive a minimum of four weeks notice of termination of employment or four weeks salary in lieu of such notice. In addition, the following severance schedule shall apply:

|               |         |
|---------------|---------|
| 3 - 6 months  | 2 weeks |
| 6 - 12 months | 4 weeks |
| 1 - 2 years   | 6 weeks |
| 2 - 3 years   | 8 weeks |

Then one additional week's severance for each year of service. All payments in payments in lieu of notice, severance pay, accumulated holiday or vacation pay shall be paid at the staff

announcer' s personal agreement rate is such announcer has a personal agreement calling for a salary higher than the minimum salaries herein.

The Company may discharge staff announcers without notice or termination pay for flagrant neglect of duty, drunkenness, dishonesty or other serious cause. Any staff announcer whose employment is terminated shall be entitled to payment for any compensating days off which he may have earned and not received.

\* \* \*

16. Equal Opportunity

Both parties hereto affirm their intentions to continue to adhere to and support a policy which affords equal opportunity to qualified individuals regardless of their race, creed, color, national origin, age or sex.

BACKGROUND

The Employer, EZ Communications, Inc., owns and operates WBZZ, a Pittsburgh FM radio station, with offices located at 1715 Grandview Avenue, Pittsburgh, PA 15211. The grievant, Liz Randolph, has been employed by the Company since 1985 as its news director. Her duties include gathering and writing news, screening mail, taping the overnight news, dubbing a program called "Earth News", taping miscellaneous interviews and research. In addition, she also reads the news twice each hour during a morning radio show called "The Quinn and Banana Show", which features radio personalities Jim Quinn and Don Jefferson.

It has become common practice in today's radio industry for the newsperson, weather reporter, and even traffic reporter to engage in "banter" with the disc jockeys rather than just giving their various reports. The grievant alleges that, on a number of occasions, Quinn and Banana made lewd and derogatory comments about her during their radio program to the effect that she was sexually promiscuous, thereby causing her reputation to suffer in the Communications Industry and causing her emotional and physical pain and suffering.

The grievant's unrebutted testimony was that these comments first began in February, 1986 while she was on vacation on a Caribbean Cruise. Quinn and Banana stated during their program that she was on the "Love Bloat" and that she was having promiscuous sex with various people on the cruise ship. Apparently these and similar comments were made the entire time she was on vacation as an on-going topic for their brand of "humor". The grievant testified that upon return from vacation she called the Program Director at the radio station and told him she was upset over these outrageous and malicious statements. The grievant also indicated that she told the two disc jockeys of her anger at their statements.

The next on-the-air comments occurred in July, 1986 while the grievant was vacationing in Cape Cod, Massachusetts. The grievant testified that upon her return, she heard from various friends who had listened to "The Quinn and Banana Show" that they indicated she was having sex with various people in Cape Cod.

The grievant stated that she suffered a severe panic attack due to these comments and was taken to the hospital for tests. On-the-air comments, such as the following, apparently continued on a steady basis from July of 1986 to January of 1988, "suggesting" that she was a promiscuous person, that she had oral sex and intercourse with large numbers of people, that she was mentally unstable and had sexually transmitted diseases, that she was having sex with a number of the Pittsburgh Penguins as well as members of the U.S. Marine Corps, and the fact that she knows the hotline numbers for the Center for Disease Control by heart.

These comments/jokes apparently reached a breaking point for the grievant on January 22, 1988, during the "Friday Morning Joke-Off". This is a regular feature of the Quinn and Banana Show and is identified over the air as being a joke. During that segment of the program, a disc jockey from a station affiliated with WBZZ called in with a joke which used the grievant as the subject matter. His joke was recorded and then later broadcast during the "Joke-Off". It was not a spontaneous call from the audience, as the majority of the jokes are. The joke went as follows:

"My wife goes to the same hairdresser that Liz Randolph goes to."

"Oh, she does?"

"Yeah, she does."

"Did you know that Liz Randolph has a tattoo on her forehead?"

"Oh yeah, what does it say?"

"It says, 'Let go of my ears, I'm doing the best I can.'"

There is no question that this "joke" alludes to the performance of oral sex.

The grievant did not actually hear the joke as it was originally broadcast. Rather, one of the disc jockeys played a tape of it for her shortly afterwards, just several minutes before she was to read the news. Upon hearing the "joke", the grievant became extremely distraught and began shaking. She testified that she became so emotionally devastated and humiliated that she could not go on the air. She went looking for the program director but he had yet to arrive, so she left the station shortly thereafter. When the general manager, Mr. Tex Meyer, arrived a few minutes later, he heard bits and pieces of what had occurred and immediately began an investigation. He pulled Quinn and Banana off the air and met with them as well as his program director. Another disc jockey was brought in to finish their show. The grievant's two remaining news casts that morning were not aired. As soon as the grievant got home, she called the station and attempted to contact the program director but he was not available. The grievant returned later that day to the station and wanted to resume her work. However, because of what had transpired, she was placed on leave of absence with pay until an investigation could be completed.

On January 27, 1988, a meeting was held with all parties. The grievant's employment was terminated on January 29, 1988, for

flagrant neglect of duty. Her subsequent claim for severance pay was denied based upon the forfeiture language contained in Article 7 of Schedule I, thus giving rise to the within grievance.

### ISSUE

Whether the actions of the grievant in leaving the radio station premises without completing her assigned duties constituted a flagrant neglect of duty which authorized the Company to withhold payment of severance pay?

### POSITION OF THE EMPLOYER

It is a well settled principle of Arbitration Law that an employee who is confronted with a situation in his/her working environment which he/she believes to constitute a violation of the Collective Bargaining Agreement, is required to carry out his/her work assignment and to turn to the grievance procedure for relief, rather than engaging in self help by walking off the job. Arbitrators have recognized that resorting to self help may be justified where adherence to work orders would result in a serious health hazard. The grievant made an obvious attempt to fit within the very narrow exception to the rule of perform now and grieve by offering the testimony of David B. Orbison, Ph.D. However, Dr. Orbison's testimony is highly questionable. First, he stated that he could not make a diagnosis of the grievant's condition. Second, the grievant had been treating with a

psychiatrist for quite some time and Dr. Orbison never contacted him before issuing a report. Moreover, the psychiatrist, was not called to testify. The only information utilized by Dr. Orbison was transmitted to him by the grievant in a two hour interview "from her perspective". Dr. Orbison reviewed no medical records whatsoever. Finally, Dr. Orbison admitted that a diagnosis of a personality disorder cannot be made in one short interview.

Despite all of the above, the grievant asks the Arbitrator to accept Dr. Orbison's opinion that she was incapable of performing her duties on the morning of January 22, 1987. This is despite the fact that she was medically capable of announcing her intent to sue the Employer before leaving the premises, she was capable of calling the station and advising she would have a statement for them later that day, she was capable of meeting with her attorney and, finally, she was capable of attempting to complete her duties later that afternoon. Moreover, she did not call her psychiatrist on January 22, 1987, to seek medical help as one might expect. Such facts are not uncommon in a situation where a terribly angry employee strikes out at her Employer in the heat of the moment only to realize later on that she has made a terrible mistake and tries to return to work.

All of the above facts lead to the conclusion that the grievant's condition from the morning of January 22, 1987, was not such that she was incapable of performing her duties.

In addition, the exception argument of the grievant should be rejected based upon the fact that it was two years in the



making. The exception usually occurs when an Employer issues a directive to an employee which the employee believes would lead to a serious health hazard. The employee then, on the spur of the moment, refuses. In this matter, the grievant alleges violations of her rights causing emotional and physical harm dating back to February, 1986. The grievant had a 23 month period within which to file a formal grievance and have the matter resolved. She did not. Therefore, the grievant was not out of the blue placed in the position of fear for her physical well-being which caused her to bolt from her duty station.

Finally, the grievant is involved in the entertainment business. The grievant is part of the entertainment vehicle and is involved in the interplay with the other on-air talent. The grievant knew of and accepted this role as evidenced by her testimony that in the past she willingly engaged in this banter, that at one time she showed up at the station in a very revealing outfit, and often made suggestions that she wanted to be nude. Thus, the instant dispute should be viewed in a context which differs substantially from the normal industrial work place environment.

#### POSITION OF THE UNION

The burden of proof is upon the Employer to establish that the grievant was terminated due to a flagrant neglect of duty. The only witness for the Employer was the general manager, Tex Meyer, whose explanation of the reason for the discharge falls